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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,148	07/31/2001	N. Lee Rhodes	10013110-1	3139

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EXAMINER

CHEUNG, MARY DA ZHI WANG

ART UNIT PAPER NUMBER

3621

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,148

Applicant(s)

RHODES, N. LEE

Examiner

Mary Cheung

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-31 is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. This action is in response to the application filed on July 31, 2001. Claims 1-31 are pending.

Claim Objections

2. Claims 6, 8, 14, 19-22 and 28-30 are objected to because of the following informalities:

- a) In line 4 of claim 6, the phrase "the fixed revenue value" should be "the fixed fee revenue value";
- b) In line 1 of claim 8, the phrase "the total number" should be "a total number";
- c) In line 3 of claim 8, the phrase "the cumulative number" should be "cumulative number";
- d) In line 2 of claim 14, the phrase "the cumulative usage" should be "cumulative usage";
- e) In line 4 of claim 19, the phrase "the fixed revenue value " should be "the fixed fee revenue value";
- f) In line 4 of claim 20, the phrase "the cumulative subscriber usage" should be "the cumulative subscriber usage below the threshold value";
- g) In line 2 of claim 21, the phrase "the cumulative number" should be "cumulative number";
- h) In line 3 of claim 21, the phrase "the number" should be "number";
- i) In line 10 of claim 22, the word "distribution" should be "distribution model";

- j) In line 1 of claim 28, the phrase "claim 26" should be "claim 27";
- k) In line 5 of claim 28, the phrase "the fixed revenue value" should be "the fixed fee revenue value";
- l) In line 4 of claim 29, the phrase "the cumulative subscriber usage" should be "the cumulative subscriber usage below the threshold value";
- m) In line 2 of claim 30, the phrase "the total number" should be "a total number;
- n) In lines 2-3 of claim 30, the phrase "the cumulative number" should be "cumulative number".

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory

subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the independent claims 1-22 only recite an abstract idea. The recited steps of merely collecting and defining data for the purpose of determining, calculating and utilizing an excess usage component do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an abstract idea how to estimate an excess usage component with sufficient accuracy.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, applicant discusses the importance of determining an excess usage component by using the claimed method. In particular, on pages 14-15 of the specification, applicant illustrates using the claimed method for determining an excess usage component instead of the conventional calculations would alleviate the burden of cumbersome data calculations. Thus, the method of claims 1-22 produces a useful, concrete, and tangible result.

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-22 are deemed to be directed to non-statutory subject matter.

Allowable Subject Matter

5. Claims 23-31 are allowed.
6. The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art of Bowman (U. S. patent 5,627,886) teaches analyzing each of the received event records to determine its type based on user-defined parameters, identifies predetermined fields in the analyzed event record to be used as keys, measures network usage associated with the key, summarizes usage statistics against at least one of the keys, compares statistic totals to predefined thresholds, and responds with an alarm when the thresholds are met or exceeded.

In regarding to independent claims 23 and 31, Bowman taken either individually or in combination with other prior art of record fails to teach or suggest defining a threshold value, and determining an excess usage component by summing all subscriber usage greater than the threshold value, and subtract the product of the sum of the number of subscribers greater than the threshold value and the threshold value.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Zhao (U. S. Patent 6,081,840) discloses a system for efficiently distributing computer data files to remotely located end users over a communications network.

Young (U. S. Patent 6,377,939) discloses a metering and processing system for processing metered information incorporates configurable processing modules and a configuration manager.

Hashiguchi (JP 08331151 A) discloses analyzing faults for a local area network.

The book titled Probability and Random Processes for Electrical Engineering (written by Leon-Garcia) discloses probability density function and Queueing Theory.

Inquire

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Cheung whose telephone number is (703)-305-0084. The examiner can normally be reached on Monday – Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell, can be reached on (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

The fax phone number for the organization where this application or proceedings is assigned are as follows:

(703) 872-9306 (Official Communications; including After Final
Communications labeled "BOX AF")
(703) 746-5619 (Draft Communications)

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, 7th Floor Receptionist.

Mary Cheung
Patent Examiner
Art Unit 3621
January 23, 2004

